

MAR 17 1994

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In The
Supreme Court of the United States

October Term, 1993

AMERICAN AIRLINES, INC.,

Petitioner,

v.

MYRON WOLENS, ALBERT J. GALE, R. CRAIG ZAFIS,
BRET MAXWELL, ROBERT NELSON and P.S. TUCKER,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

**RESPONDENTS' OPPOSITION TO MOTION
OF AIR TRANSPORT ASSOCIATION OF AMERICA
FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

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Respondents, on behalf of themselves and all others similarly situated, respectfully submit this objection to the motion of Air Transport Association of America for leave to file a brief *amicus curiae*. As grounds, Respondents state as follows:

1. This matter is before the Court on American Airline's Petition for Writ of Certiorari to the Supreme Court of Illinois ("Petition"). Respondents have opposed the Petition. Petitioner seeks review of a decision by the Illinois Supreme Court that plaintiffs' garden-variety breach of contract and consumer fraud claims against Petitioner for unilaterally changing the terms of the contract between Petitioner and members of its "frequent flyer" club were not pre-empted by federal law under the standards set forth in *Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031 (1992).

2. The issue before this Court is whether the Court should review the Illinois Supreme Court's fact-sensitive application of *Morales* to Petitioner's actions.

3. Air Transport Association of America ("ATA"), which seeks to file an *amicus* brief, is a trade association of which Petitioner American Airlines is a member. Consequently, any input ATA has with regard to the limited scope of this Petition should have been - and was - incorporated in the Petition. The proposed *amicus curiae* brief will not bring "relevant matter to the attention of the Court that has not already been brought to its attention by the parties". See Supreme Court Rule 37.1.

4. ATA tries to claim a special expertise to promote the broad, industry-wide perspective. ATA makes two arguments: (1) allowing plaintiffs' claims to stand would

have far-reaching effects on airline industry competition; and (2) allowing the claims would force airlines to modify their behavior to conform to Illinois law. Petitioner made both of these arguments in the Petition. See Petition at 3, 4, 11, 12, 16-17, 27-28. In their Response to the Petition, Respondents addressed these points, arguing, among other things, that a free deregulated market, supporting free competition, incorporates the principle that those who breach contracts or defraud others will be liable for damages. See Response at 8, 25. Respondents also argued that Illinois law does not differ markedly from other states' laws on contracts and fraud. See Response at 25-26.

5. Every purported conflict ATA asserts between the Illinois Supreme Court decision and other cases was asserted by Petitioner. Every case ATA cites was cited by Petitioner. Every complaint ATA makes about the impact of the Illinois Supreme Court's decision on airlines was made by Petitioner. Thus, ATA's proposed *amicus* brief merely regurgitates the arguments made in the Petition.

6. ATA has not demonstrated any special knowledge or expertise relating to the pre-emption provisions of the Federal Aviation Act and its motion illustrates that it has nothing further to add to Petitioner's argument.

7. It would be prejudicial to Respondents to allow Petitioner's own trade association to file an additional brief on the identical issues that Petitioner has raised and argued.¹

¹ ATA moved for leave to file an *amicus* brief before the Illinois Supreme Court on the remand from this Court.

For the foregoing reasons, Respondents pray that the motion of Air Transport Association of America for leave to file a brief *amicus curiae* be denied.

Respectfully submitted,

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Respondents objected there, as here, that ATA merely reiterated the Petitioner's arguments. The Illinois Supreme Court refused to accept the *amicus* brief.